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Attorneys for Trustee

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA**

In re:

Chapter 15

SOUTHPLACE (AMERICA) LLP, a limited liability partnership incorporated in the United Kingdom,

Case No. 2:10-bk-33724

### Debtor in a foreign proceeding

**STATEMENT OF FOREIGN  
REPRESENTATIVE AND TRUSTEE  
IN SUPPORT OF PETITION AND  
RECOGNITION APPLICATION**

I, Andrew James Davison, declare under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I am over the age of 18 and I make this statement in support of the Chapter 15 bankruptcy petition (the “Chapter 15 Petition”) of Southplace (America) LLP, a limited liability partnership incorporated in the United Kingdom (“Debtor”).

2. If called upon, I could testify to all matters set forth in this statement based upon my personal knowledge, except for those portions herein specified as being otherwise.

3. Debtor was formed under the laws of the United Kingdom. Debtor's registered office is Ten George Street, Edinburgh, EH2 2DZ.

4. On December 14, 2009, Debtor filed its Notice of Intention to Appoint an Administrator by Limited Liability Partnership in the Court of Session (the "Notice of

1 Intent"). The Notice of Intent was endorsed by the Court of Session on December 14, 2009.  
2 A copy of the Notice of Intent is attached hereto as Exhibit "A".

3 5. On December 24, 2009, Debtor filed is Notice of Appointment of an  
4 Administrator by Limited Liability Partnership in the Court of Session (the "Notice of  
5 Appointment"). The Notice of Appointment was endorsed by the Court of Session on  
6 December 24, 2009. A copy of the Notice of Appointment is attached hereto as Exhibit "B".

7 6. Pursuant to the Notice of Intent and the Notice of Appointment, Andrew James  
8 Davison and Colin Peter Dempster of Ernst & Young LLP (collectively, "Trustee") were  
9 appointed the administrators of Debtor (the "UK Proceeding").

10 7. I am a chartered accountant of Trustee, and a principle person in charge of  
11 this matter.

12 8. Under applicable Scottish insolvency law, all assets of Debtor have vested in  
13 Trustee, and there is a stay of proceedings in force. All creditors of Debtor are treated  
14 equally in the sense that non-Scottish creditors are accorded the same priority and are  
15 otherwise provided with the same treatment as Scottish Creditors.

16 9. Debtor's principal place of business and "center of main interest" is in  
17 Edinburgh, Scotland. Debtor has no assets outside of Scotland other than the assets located  
18 in Maricopa County, Arizona (the "Arizona Assets"). All of Debtor's business records are in  
19 Edinburgh, Scotland, and all its members are located in the United Kingdom.

20 10. On or about August 27, 2009, The Desert Mountain Master Association  
21 ("Desert Mountain") filed a lawsuit (the "Arizona Action") against Debtor for breach of  
22 contract, declaratory judgment, and injunctive relief relating to Debtor's alleged failure to  
23 comply with the Amended and Restated Master Declaration of Covenants, Conditions,  
24 Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easement for Desert  
25 Mountain (the "Master Declaration") and Declaration of Covenants, Conditions, Restrictions  
26

1 and Easement for Desert Mountain, Phase II, Unit Eighteen (The Village of Painted Sky) (the  
2 "Village Declaration").

3       11. Despite knowledge of the UK Proceeding, Desert Mountain continues to  
4 prosecute the Arizona Action. Desert Mountain is interfering with Trustee's administration  
5 and liquidation of the Arizona Assets that belong to Debtor.

6       12. Upon information and belief, the UK Proceeding is the only "foreign  
7 proceeding" with respect to Debtor.

8       13. Debtor has fewer than ten creditors in Scotland with claims in excess of  
9 \$1,900,000.00.

10       14. Trustee is required to administer the payment of the creditors as required under  
11 Scottish insolvency law.

12       15. Upon information and belief, there are no creditors of Debtor in the United  
13 States, except for:

- 14           a.     Desert Mountain;
- 15           b.     City of Scottsdale which is owed approximately \$20,507.00; and
- 16           c.     Maricopa County Treasurer which is owed approximately \$24,124.15.

17       16. Although no claims regarding the following have been intimated to Trustee to  
18 date, the following may be creditors of Debtor in the United States:

- 19           a.     Ruben Hernandez, Financial Services Customer Service;
- 20           b.     HIG Consulting;
- 21           c.     All Pro Fence Co.; and
- 22           d.     Advanced Mobile Storage.

23       17. I have not received a formal Statement of Claim from any of these creditors.

24       18. The ultimate goal of the Trustee is to ensure an orderly administration of the  
25 financial affairs of Debtor and to maximize the value of Debtor's assets to be distributed to  
26

1 all creditors, under the auspices of Scottish law, and with the aid of this Court as requested  
2 herein.

3       19. Trustee believes that granting the relief sought in the Chapter 15 Petition will  
4 best afford (and may be the only way to assure), the equitable collection, liquidation, and  
5 distribution to creditors in Scotland and the United States.

6       20. No previous application for the relief requested in the Chapter 15 Petition has  
7 been made in this or any other court.

8           IN WITNESS HEREOF, I have executed this Statement under penalty of perjury  
9 under the laws of the United States of America this 20<sup>th</sup> day of October, 2010.

10           By: A.J.D.  
11                   Andrew James Davison  
12                   Chartered Accountant, Ernst & Young LLP  
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1                   **NOTICE OF ELECTRONIC FILING**

2                   I hereby certify that on October 20, 2010, I electronically filed the foregoing with  
3 the Clerk of Court for filing and uploading to the CM/ECF system which will send  
4 notification of such filing to all parties of record.

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6                   /s/ Charles J. Morrow

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# **EXHIBIT “A”**

## Notice of intention to appoint an administrator by limited liability partnership

**Pursuant to paragraph 26 of Schedule B1 to the Insolvency Act 1986  
and Rule 2.13 of the Insolvency (Scotland) Rules 1986**

|                                       |                   |
|---------------------------------------|-------------------|
| Name of Limited Liability Partnership | Registered number |
| Southplace (America) LLP              | SO300794          |

(a) Insert name and address of registered office of company

\*Delete as applicable

(b) Give name(s) and address(es) of proposed administrator(s)

1. Notice is given that, in respect of Southplace (America) LLP, having its registered office at 28 Stafford Street, Edinburgh, Midlothian EH3 7BD ("the LLP")

\*the LLP ("the appointor") intends to appoint

(b) Colin Peter Dempster and Andrew James Davison, both chartered accountants of Ernst & Young LLP, 10 George Street, Edinburgh EH3 6AS  
as administrators of the LLP.

2. The amount of the LLP's share capital paid up or credited as paid up is N/A.

3. This notice is being given to the following persons, being persons who are or may be entitled to appoint an administrative receiver of the LLP or an administrator of the LLP under paragraph 14 of Schedule B1 to the Insolvency Act 1986:

(c) Insert name and address of each person to whom notice is given

Bank of Scotland plc, The Mound, Edinburgh

4. The LLP has not, within the last twelve months:

- (i) been in administration;
- (ii) been the subject of a moratorium under Schedule A1 to the Insolvency Act 1986 which has ended on a date when no voluntary arrangement was in force; or
- (iii) been the subject of a voluntary arrangement which was made during a moratorium for the LLP under Schedule A1 to the Insolvency Act 1986 and which ended prematurely within the meaning of section 7B of the Insolvency Act 1986.

5. In relation to the LLP there is no:

- (i) petition for winding up which has been presented but not yet disposed of;
- (ii) administration application which has not yet been disposed of; or
- (iii) administrative receiver in office.

\*Delete as applicable

6. The LLP is not an insurance undertaking / a credit institution / an investment undertaking providing services involving the holding of funds or securities for third parties / a collective investment undertaking under Article 1.2 of the EC Regulation.

(d) Insert whether main or territorial proceedings

7. For the following reasons it is considered that the EC Regulation will apply. If it does, these proceedings will be (d) main proceedings as defined in Article 3 of the EC Regulation: "Administration" is listed in Annex A of the EC Regulation, being "insolvency proceedings" as referred to in Article 1 of the EC Regulation and the LLP is registered in Scotland and does not fall within one of the excepted categories.

8. Attached to this notice is \*a copy of the resolution of the LLP to appoint an administrator.

9. This notice is to be lodged in (e) The Court of Session in Edinburgh.

Any enquiries should be addressed not to the court but to the appointor at the address stated in this form.

(f) Insert name and address of person making declaration

I (f) WILLIAM GEORGE RITCHIE THOMSON,  
a member and authorised signatory of the LLP of THE OLD HOUSE OF ORCHILL, BRAVO, PERTHSHIRE,  
FK15 9LF  
(If making the declaration on behalf of appointor indicate capacity e.g. director/solicitor)

hereby do solemnly and sincerely declare that:

- (i) the LLP is or is likely to become unable to pay its debts
- (ii) the LLP is not in liquidation, and
- (iii) the statements in paragraph 4 and 5 are, so far as I am able to ascertain, true,

and that the information provided in this notice is to the best of my knowledge and belief true,

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act 1835

Declared at Edinburgh

Signed William R

This 11 day of December 2009

before me Helen Henderson

A Notary Public or Justice of the Peace or Solicitor. NOTARY PUBLIC  
EDINBURGH



**Consent of Floating Charge Holder to Appointment of Administrator(s)**

(Do not detach this part of the form)

(g) Appointor to insert address

If, having read this notice, you have no objection to the making of this appointment you should complete the details in the box below and return a copy of this notice as soon as possible, and within five business days from receipt of this notice, to the appointor at the following address: Southplace (America) LLP, 28 Stafford Street, Edinburgh, Midlothian EH3 7BD

If your consent has not been given within five business days the appointor may make the appointment notwithstanding that you have not notified your consent to the appointment.

(h)

(h) Insert name and address

being the holder of the following charge over the company's property:

(i)

consents to the appointment of the administrators in accordance with the details of this notice.

Signed \_\_\_\_\_

Authorised Signatory

Dated \_\_\_\_\_

(i) Give details of charge,  
date registered and financial  
limit (if any)

**Endorsement to be completed by court**

(j) Insert date and time

This notice was lodged on (j) 14th December 2009 at 4.00pm



**RESOLUTION BY SOUTHPLACE (AMERICA) LLP RE APPOINTMENT OF  
ADMINISTRATOR(S)**

EXTRACT from the MINUTES of  
MEETING of the MEMBERS of  
SOUTHPLACE (AMERICA) LLP ("the  
LLP") held at Edinburgh

on 11<sup>th</sup> December 2009

It was resolved by the LLP that (1) Colin Peter Dempster and Andrew James Davison of Ernst & Young LLP, 10 George Street, Edinburgh be appointed as Joint Administrators of the LLP by the LLP; and (2) any one member of the LLP be authorised and is hereby authorised to complete and execute on behalf of the LLP the requisite documentation in respect of the said appointment including, *inter alios* the Notice of Intention to Appoint Administrators to be issued to the Floating Charge Holder (being Bank of Scotland plc).

Certified as a true Extract

Member



# **EXHIBIT “B”**

# Notice of appointment of an administrator by limited liability partnership

(where a notice of intention to appoint has been issued)

Pursuant to paragraphs 22 and 29 of Schedule B1 to the Insolvency Act 1986 and Rule 2.16 of the Insolvency (Scotland) Rules 1986

|   |                                   |
|---|-----------------------------------|
| Name of Limited Liability Partnership<br><br>Southplace (America) LLP | Registered number<br><br>SO300794 |
|---|-----------------------------------|

(a) Insert name and address of registered office of the company

- Notice is given that, in respect of (a) Southplace (America) LLP, having its registered office at 28 Stafford Street, Edinburgh, Midlothian EH3 7BD ("the LLP")

\*the LLP ("the appointor") hereby appoints

\*Delete as applicable

- (b) Colin Peter Dempster and Andrew James Davison, both chartered accountants of Ernst & Young LLP, 10 George Street, Edinburgh EH3 6AS

as administrators of the LLP.

2. The amount of the LLP's share capital paid up or credited as paid up is N/A

3. The statements of the proposed administrators are attached.

\*Delete as applicable

4. The appointor is entitled to make an appointment under paragraph 22 of Schedule B1 to the Insolvency Act 1986.

5. This appointment is in accordance with Schedule B1 to the Insolvency Act 1986.

\*Delete as applicable

6. The LLP is not an insurance undertaking / a credit institution / an investment undertaking providing services involving the holding of funds or securities for third parties / a collective investment undertaking under Article 1.2 of the EC Regulation.

7. For the following reasons it is considered that the EC Regulation will apply. If it does, these proceedings will be (c) main proceedings as defined in Article 3 of the EC Regulation: "Administration" is listed in Annex A of the EC Regulation, being "insolvency proceedings" as referred to in Article 1 of the EC Regulation and the LLP is registered in Scotland and does not fall within one of the excepted categories.

8. Where there are joint administrators, a statement for the purposes of paragraph 100(2) of Schedule B1 to the Insolvency Act 1986 is attached.

9. The appointor has given at least five business days' written notice of the intention to appoint in accordance with paragraph 26(1) of Schedule B1 to the Insolvency act 1986 and a copy of that notice was lodged in the Court of Session on (d) 14 December 2009.

(d) Insert date

(e) Insert name and address of person making declaration

I (e) William George Ritchie Thomson  
a member and authorised signatory of the LLP of The Old House of Orchill, Braco, Perthshire, FK15 9LF

(If making the declaration on behalf of appointor indicate capacity e.g. director/solicitor)

do solemnly and sincerely declare that

- (i) the information provided in this notice; and
- (ii) the statements made and information given in the notice of intention to appoint,

are, and remain, to the best of my knowledge and belief, true,

**AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.**

Declared at EDINBURGH

Signed Eilidh A Smith

This 23<sup>rd</sup> day of December 2009

before me Eilidh A Smith

A Notary Public or Justice of the Peace or Solicitor

EILIDH SMITH

NOTARY PUBLIC  
15ATHOLL CRESCENT  
EDINBURGH

**Endorsement to be completed by court**

(f) Insert date and time

This notice was lodged on (f) 24<sup>th</sup> December 2009 at 10:00 am

CJ



## Statement

### Pursuant to paragraph 100(2) of Schedule B1 to the Insolvency Act 1986

Name of Limited Liability Partnership  
Southplace (America) LLP

Registered number:  
SO300794

Whereas, Colin Peter Dempster and Andrew James Davison, both chartered accountants of Ernst & Young LLP, 10 George Street, Edinburgh EH3 6AS are to be appointed as joint administrators of Southplace (America) LLP ("Joint Administrators"), we, Southplace (America) LLP, being the appointers of the Joint Administrators, hereby declare pursuant to paragraph 100(2) of Schedule B1 to the Insolvency Act 1986 that any one of the Joint Administrators may exercise all and/or any of the powers which are conferred on them as Joint Administrators of Southplace (America) LLP by the Insolvency Act 1986.

Signed for and on behalf of Southplace (America) LLP

Signed.....

Capacity .....

Full Name .....

Dated.....



## Statement of proposed administrator

Pursuant to paragraph 18(3) or 29(3) of Schedule B1 to the Insolvency Act 1986 and Rule 2.2, 2.4(2), 2.10(2), 2.16(3) or 2.53(1) of the Insolvency (Scotland) Rules 1986

|                                       |                   |
|---------------------------------------|-------------------|
| Name of Limited Liability Partnership | Registered number |
| Southplace (America) LLP              | SC300794          |

(a) Insert name and address of proposed administrator

1. I (a) Colin Peter Dempster, chartered accountant of Ernst & Young LLP, 10 George Street, Edinburgh EH3 6AS

hereby certify that I am authorised under the provisions of Part XIII of the Insolvency Act 1986 to act as an insolvency practitioner.

I.P. No.: 8908

(b) Insert name of company

\* Delete as applicable

Name of Regulatory Body: The Institute of Chartered Accountants of Scotland

2. I consent to act as administrator of (b) Southplace (America) LLP

in accordance with the notice of appointment of

(c) Southplace (America) LLP dated (d) 23 December 2009.

(c) Insert name of person presenting administration application or making the appointment

(d) Insert date of application or notice of appointment

\* Delete as applicable

3. I am of the opinion that the purpose of administration is reasonably likely to be achieved.

4. I have not had any prior professional relationship with Southplace (America) LLP.

Signed \_\_\_\_\_

Dated 23 DECEMBER 2009



Rule 2.2  
Rule 2.4  
Rule 2.10  
Rule 2.16  
Rule 2.53

The Insolvency Act 1986

Form 2.1B (Scot)

## Statement of proposed administrator

Pursuant to paragraph 18(3) or 29(3) of Schedule B1 to the Insolvency Act 1986 and Rule 2.2, 2.4(2), 2.10(2), 2.16(3) or 2.53(1) of the Insolvency (Scotland) Rules 1986

|                                       |                   |
|---------------------------------------|-------------------|
| Name of Limited Liability Partnership | Registered number |
| Southplace (America) LLP              | SO300794          |

(a) Insert name and address of proposed administrator

1. I (a) Andrew James Davison, chartered accountant of Ernst & Young LLP, 10 George Street, Edinburgh EH3 6AS

hereby certify that I am authorised under the provisions of Part XIII of the Insolvency Act 1986 to act as an insolvency practitioner.

I.P. No.: 9353

Name of Regulatory Body: The Institute of Chartered Accountants of Scotland

(b) Insert name of company

\* Delete as applicable

2. I consent to act as administrator of (b) Southplace (America) LLP

in accordance with the notice of appointment of

(c) Insert name of person presenting administration application or making the appointment

(c) Southplace (America) LLP dated (d) 23 December 2009.

(d) Insert date of application or notice of appointment

\* Delete as applicable

3. I am of the opinion that the purpose of administration is reasonably likely to be achieved.

4. I have not had any prior professional relationship with Southplace (America) LLP.

Signed A. R.

Dated 23 December 2009

